IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1661 OF 2006

Worli Macchhimar Sarvodaya Sahakari
Society Ltd. .. ..Petitioners

Versus

Smt.Piroj Dattatraya Worlikar & Ors. ..Respndents

Mr.Naveen Parekh i/b Ms Hetal Patel for petitioners
Mr. P.G.Lad for respondent no.2

CORAM : P.V.KAKADE, J.

DATE : 17th APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner-tenant has preferred this petition against the judgment and order dated 9.1.2005 dismissing his appeal and confirming the judgment and order passed by the trial court dated 13.8.2001 decreeing the suit and

directing the petitioner-tenant to deliver vacant and peaceful possession of the suit premises within a particular time.

3. The plaintiffs-respondents are the landlord of the suit property whereas the petitioner is the fisherman society registered under the Maharashtra Cooperative Societies Act. The Respondents-plaintiffs filed the suit alleging that they required the suit premises reasonably and bonafide for their own use and occupation. During the passage of time family of the plaintiffs expanded and it was difficult for them to accommodate entire family in one room tenement at Mandvi Koliwada. The said tenement was acquired on tenancy basis from the Bombay Municipal Corporation and it was the case sought to be made out at the time of filing of suit their family consists of eight members and there are only two members earning and therefore, it was not possible for them to acquire another premises to accommodate their family. Therefore, their requirement was said to be reasonable and bonafide. According to the plaintiffs, the defendants-society was formed in the interest of fishermen community and granting facilities in their fishing business. The defendants have purchased a building immediately next to

the suit premises consisting of ground and one upper floor. There were five tenements let out to five tenants and one tenement is used by the defendants-society for their office and entire first floor was a big hall kept by the society in its possession. Thus, according to the plaintiffs, the defendants have their own arrangement and acquired premises and therefore, there would not be any hardship to the defendants if the decree is passed. The suit notice came to be issued, however, the defendants refused to hand over possession therefore, the suit came to be filed. The defendants, inter alia, denied the allegations made by the plaintiffs and sought dismissal of the suit.

4. The learned trial judge adjudicated the dispute on merits on the basis of the available evidence and came to the conclusion that the plaintiffs was the landlords of the suit premises and requirement of the plaintiffs were reasonable and bonafide. It was further held that the greater hardship would be caused to the plaintiffs-respondents in case the suit dismissed than to the petitioner-tenant if the suit came to be decreed and suit finally came to be decreed.

. The appeal was carried out to the lower appellate court, who after hearing both the parties concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present petition.

5. At the outset, it may be noted that both the courts have concurrently found that the requirement of the plaintiffs is reasonably and bonafide. It is also concurrently found that the issue of greater hardship would held in favour of the plaintiffs-respondents.

6. The learned counsel for the petitioners submitted that there was clear bar to the cause of action of the provisions of Section 25 of the Bombay Rent Act. If we perused the record the defendants have tried to make out a case that they were let out open piece of land whereupon the suit premises was constructed by the defendants society. On the other hand, it is a case of the plaintiffs that there was a hut on the premises which was let out to the defendants. The learned counsel for the petitioners submitted that there was neither evidence nor pleading on record to show that the hut was residential one and therefore, it cannot be said that the plaintiffs were right in claiming the possession of the

suit property for residential use and occupation. It was further submitted that the premises was since beginning let out for non residential purposes and therefore, plaintiffs cannot seek possession thereof for residential purpose due to the bar of provision of Section 25 of the Act. In order to buttress his submission he sought to put reliance on the Apex Court judgment in the case of **Bapubhai Mohanbhai vs. Mahila Sahakari Udyog Mandir reported in AIR 1975 SC 2128**. As against this the learned counsel for the respondents sought to put reliance on the ruling of this court in the case of **Honraj Jethanand Sadarangani & Ors. vs. Sheth Sakharam Nemchand Jain , & Ors. reported in 1983 (2) B.C.R. 574**, wherein the reference is also made of the Apex Court Judgment in Bapubhai's case (supra). The ratio laid down by this court is to the effect that contention that under Section 25, residential tenements cannot be used for non-residential purpose cannot be considered. Referring to the Apex Court judgment in Bapubhai's case (supra), the learned single judge has also observed that the said apex court judgment merely show that consideration of Section 25 of the Act should be present to the mind of the court while considering the question of reasonableness of the need of the landlord. It is

specifically observed that whether the requirement of the landlord is reasonable or not is to be judged from all the facts and circumstances of the case and a highly relevant circumstance bearing on the reasonableness of the landlord's requirement is that the purpose for which the premises cannot be used save on pain of penal consequences. It is, therefore, a question of fact in each case to find out as to whether, in view of the prohibition of Section 25 of the Act, a particular decree should be made or not.

. The learned counsel for the petitioner also submitted that in view of the facts and circumstances, it is clear that the plaintiff has contravened the provisions of MRTP as well as B.M.C. Regulations applicable to the present case, which however, in my view would not be applicable to the present case.

6. No doubt that the plaintiffs have used a specific word "residence" while referring to the suit premises in the plaint as well as in the course of his evidence, the documentary evidence is sufficiently show that the suit premises is located in residential area of fisherman community and the record also shows that it is described

as hut (house). In the circumstances, it cannot be said that the defence of the plaintiffs including the pleadings are vague and cannot be said that the suit premises was originally not a residential premises. Therefore, if the original residential premises is given on lease for a non residential purpose of the defendants and thereafter possession is sought back for residential use on the ground of bonafide and reasonable requirement, I do not see any reason how bar of Section 25 of the Bombay Rent Act come into apply.

7. Be as it may, the fact remains that both the courts below have appreciated the entire evidence in proper perspective and reasoning adopted and findings recorded by both the courts below appear to be just, legal and proper.

8. In the result the petition is devoid of any merits and stands dismissed with no order as to costs.

9. At this stage the learned counsel for the petitioner sought Stay of the order. In view of the facts and circumstances, the said order shall not be executed for the period of 12 weeks from the date of this

order.